

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

SERVICE EMPLOYEES)	
INTERNATIONAL UNION, LOCAL 96,)	
)	
Petitioner,)	
)	
v.)	Public Case No. R 98-028
)	
CITY OF ST. JOESPH, COMMUNITY)	
SERVICES EMPLOYEES,)	
)	
Respondent.)	

JURISDICTIONAL STATEMENT

The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining units by virtue of Section 105.525 RSMo. 1994. This matter arises from the election petition of Service Employees International Union, Local 96 (hereinafter referred to as the Union) to represent certain employees of the City of St. Joesph (hereinafter referred to as the City). The Union seeks to represent a bargaining unit consisting solely of the four code enforcement officers of the City's Community Services Department.¹ A hearing on the matter was held on May 4, 1998, in St. Joesph, Missouri, at which representatives of the Union and the City were present. The case was heard by State Board of Mediation Acting Chairman Ronald Miller, Employee Member LeRoy Kraemer, and Employer Member Lois VanderWaerdt. At the hearing the parties were given full opportunity to present evidence and make their arguments. The parties did not file briefs. The case transcript was subsequently supplied to State Board of Mediation Chairman John Birch who participated in the Board's decision. After a careful review of the evidence and arguments of the parties, the Board sets forth the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

The City is a municipality of the State of Missouri and is comprised of several Departments. One such Department is the Community Services Department. The Community Services Department is further divided into four Divisions: Community Services Planning, Neighborhood Services, Building Regulations, and Community Development.

The City has one overall budget. Encompassed within this overall budget are the various Departmental budgets. The individual Department Directors, with the assistance of the City Manager, allocate their Department's funds to the Divisions within the Department. This allocation is based upon the functions or duties of each Division. Each Department Director is also charged with coordinating and monitoring the budgets of each program within his or her Department. The Department Directors are authorized to make Departmental budget adjustments as necessary throughout the fiscal year.

The Community Services Department is funded primarily with funds from community development block grants and the City's general fund. The Department also receives some river boat gaming funds. The Community Services Planning Division, the Neighborhood Services Division, and the Building Regulations Division are all funded with general funds. The Community Development Division, except for the Community Development Supervisor position, is funded through community development block grant funds.

Since February, 1998, the City Planner has been acting as the interim Director of the Community Services Department. As such, he is responsible for the overall administration of the Department.

¹ The Union's petition referred to the code enforcement officers as code enforcement inspectors. Based upon the evidence presented at the hearing, it appears that their correct title is code enforcement officers.

The Neighborhood Services Manager is in charge of the Neighborhood Services Division. He supervises one senior code enforcement officer, four code enforcement officers, two work crew supervisors, and one code enforcement clerk. These employees report directly to the Neighborhood Services Manager who is also responsible for performing the personnel evaluations on these individuals. The senior code enforcement officer and four code enforcement officers (collectively hereinafter the "code enforcement officers") receive their assignments directly from the Neighborhood Services Manager. In addition to his other duties, the Neighborhood Services Manager assists neighborhoods in organizing cleanup work. The code enforcement officers will assist in organizing the cleanup efforts and will man various booths on the day of the cleanup work.

Each code enforcement officer, including the senior code enforcement officer, is assigned a particular district within the City. Within their respective districts they are responsible for enforcing the zoning code, nuisance code, and building code. Most commonly, they will enforce sign codes and land use codes. They also inspect existing buildings, such as abandoned or vacant buildings, to insure they meet the minimum building standards. The code enforcement officers spend approximately six hours a day out in the field. They return to their offices, located on the fourth floor of City Hall, to complete necessary paperwork.

The code enforcement officers are required to have a high school education. They have no specialized training. Without specialized training they can not qualify as inspectors in the Building Regulations Division. Likewise, they can not qualify for positions in the Community Services Planning Division. However, the code enforcement officers may qualify for positions in the Community Development Division.

The code enforcement officers interact with the Community Services Planning Division primarily in enforcing zoning codes. For example, if a code enforcement officer sees a sign violation, the officer writes it up, but checks with the City Planner or development coordinator to see if a permit or special exception was granted concerning the sign. If no such permit or exception was granted, the code enforcement officer issues the notice and summons concerning the code violation.

The code enforcement officers also interact with the Building Regulations Division when inspecting abandoned or vacant buildings. If during an inspection of a building the code enforcement officer discovers a complicated problem, he will contact an inspector in the Building Regulations Division to determine what steps he should take. If the Building Regulations inspector deems it necessary, he will go out and inspect the problem. If the Building Regulations inspector does not think the problem is very serious, he may instruct the code enforcement officer just to secure it. The code enforcement officers and Building Regulations inspectors coordinate their activities directly through the use of radios. They use the same radio frequency. The code enforcement officers and Building Regulations inspectors may communicate as many as four times a day.

The code enforcement officers do not have any real day-to-day interaction with the Community Development Division. However, the code enforcement officers do occasionally interact with two of the Division's employees, the construction activities manager and the neighborhood partnership coordinator. The construction activities manager inspects federally-funded rehabilitation projects. If during the course of his inspections, he finds a problem with weeds, abandoned cars or junk, he will contact the code enforcement officer in that district. Likewise, if the code enforcement officer finds a problem with a building that is being rehabilitated with federal funds, he will contact the

construction activities manager. In addition, the neighborhood partnership coordinator, in her efforts to revitalize a neighborhood, will work closely with both the construction activities manager and the code enforcement officer within the district.

In addition to his regular code enforcement duties, the senior code enforcement officer coordinates the activities of the two work crew supervisors. The City has a program whereby it gets inmates from the prison to pick up trash and cut weeds on public property. The work crew supervisors oversee the inmates. The day-to-day activities of the work crews, such as where to cut weeds and pick up trash, are coordinated by the senior code enforcement officer.

The four code enforcement officers also interact with the work crew supervisors. If, during the course of his daily duties, one of the code enforcement officer notices weeds or trash on public property, he will contact the senior code enforcement officer and request a work crew to clean it up.

Although their day-to-day activities are coordinated by the senior code enforcement officer, the two work crew supervisors report to and are supervised by the Neighborhood Services Manager. The Neighborhood Services Manager also evaluates the work crew supervisors, with input from the senior code enforcement officer.

The code enforcement clerk is primarily clerical support for the code enforcement officers. Her duties include the following: answering the telephone, taking messages, typing and filing records made by the code enforcement officers, taking complaints from the public and forwarding the complaints to the appropriate code enforcement officer, and informing code enforcement officers of Court dates. She does not perform any inspections.

The Chief Building Official is in charge of the Building Regulations Division. The Chief Building Official supervises two building inspectors, one mechanical inspector, one

electrical inspector, one plumbing inspector, and two permit clerks. He also evaluates these employees. The inspectors' offices are located on the second floor of the City Hall. However, the inspectors are in the field approximately six hours per day.

The Building Regulations Division inspectors generally inspect new construction and renovations. They may also be asked to inspect building code problems in other existing buildings. For example, a code enforcement officer may request assistance from a Building Regulations inspector concerning a problem in an abandoned building.

The City employs two building inspectors: one is responsible for inspecting dangerous buildings and the other inspects the structural aspects of new construction or reconstruction. The City also employs a mechanical inspector who is responsible for inspecting heating and air conditioning. The City employs a plumbing inspector. The plumbing inspector is responsible for inspecting plumbing work. Lastly, the City employs an electrical inspector who is responsible for inspecting electrical work. Some specialized training is required to be a Building Regulations inspector. For example, the plumbing inspector must be a master plumber and the electrical inspector must be a master electrician.

The two permit clerks are located in the same office as the Building Regulations inspectors and provide clerical support for the inspectors. The permit clerks communicate with permit applicants. In addition, the permit clerks fill out paperwork, review drawings to insure all necessary items are complete, take in money, issue permits, and file permits and related documents. They do not perform inspections. The permit clerks communicate with the inspectors in the field via radio. By use of the radio, they can coordinate the inspection activity and inform inspectors of special inspections.

The City planner is in charge of the Community Services Planning Division. He supervises and evaluates the development coordinator. This division is primarily

concerned with City zoning. The development coordinator handles most day-to-day zoning problems.

The development coordinator also performs some inspections. Certain permits issued by the City must be reviewed periodically. If a permit comes up for review, the development coordinator will inspect the property to determine if code violations exist. If code violations are found, that information is disclosed at any public hearings held concerning the permit. In addition, the development coordinator will conduct a preliminary investigation concerning any land use violation reported by a code enforcement officer. He will forward his findings to the code enforcement officer. The code enforcement officer will then send out the notice and summons concerning the land use violation.

The Community Development Supervisor is in charge of the Community Development Division. He supervises the neighborhood partnership coordinator, the housing program coordinator, the construction activities manager, and the loan and fair housing coordinator. He also evaluates these individuals.

The Community Development Division oversees any funds the City receives from the federal government in the form of community development block grants, emergency shelter grants, and home funds. The City has several programs in place that offer monetary assistance to individuals to help rehabilitate homes and buildings. Division personnel will inspect these rehabilitation efforts. They will also inspect homes to insure that the individuals residing in the home have a safe environment in which to live.

The neighborhood partnership coordinator coordinates with neighborhood groups and businesses concerning area revitalization efforts. She coordinates activities to rehabilitate homes and buildings. She also assists the construction activities manager in inspecting those homes and buildings for compliance with building

regulations, minimum housing standards, and zoning codes. In performing her duties, the neighborhood partnership coordinator works closely with the construction activities manager and code enforcement officers. The neighborhood partnership coordinator position does not require any specialized skills or professional licenses. Furthermore, the neighborhood partnership coordinator does not supervise any City employees.

The housing program coordinator works with the construction activities manager in providing housing programs. He oversees, monitors, and follows up on those housing programs. The housing program coordinator performs some inspections. However, he does not supervise any City employees.

The construction activities manager coordinates all construction activity by the City. He also coordinates City-funded construction by other organizations. The construction activities manager is in the field daily to ensure that the construction is performed correctly, the construction is on time, and needed items are supplied. He also inspects federally-funded rehabilitation projects. The construction activities manager does not supervise any City employees.

The loan and fair housing coordinator performs no inspections and does not supervise any City employees.

Finally, all Community Services Department personnel have the same fringe benefits. Furthermore, the senior code enforcement officer, the code enforcement officers, the code enforcement clerk, the Building Regulations inspectors, the permit clerks, the neighborhood partnership coordinator, the housing program coordinator, the construction activities manager, and the loan and fair housing coordinator are all paid by the hour. All Community Services Department personnel, except the neighborhood partnership coordinator, are located in City Hall. The neighborhood partnership

coordinator is currently located in Paden Market. Presently, none of the department personnel are represented by a union.

CONCLUSIONS OF LAW

The Union seeks to represent a bargaining unit consisting of the code enforcement officers, excluding supervisors. The Union will not proceed to an election in any unit other than the petitioned-for unit. The City contends that the petitioned for bargaining unit is inappropriate and is an attempt by the Union to improperly carve out four positions from an appropriate Department-wide unit of approximately 21 employees. As the petitioning party, the Union has the burden of proving the appropriateness of the bargaining unit. *Central County Emergency 911 v. International Association of Firefighters Local 2665*, No. WD 54519, slip op. at 3 (Mo. App. W.D., April 28, 1998).

This Board is charged with deciding issues concerning appropriate bargaining units by virtue of Section 105.525 RSMo. 1994 which provides: "Issues with respect to appropriateness of bargaining units and majority representative status shall be resolved by the State Board of Mediation." An appropriate bargaining unit is defined in Section 105.500(1) RSMo. 1994 as:

A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

Missouri statutory law does not provide further guidelines for determining what constitutes a "clear and identifiable community of interest" nor does it set out any criteria as to the means to be used by the Board in resolving such issues. However, the Board has consistently looked to a number of factors in determining whether employees have a community of interest. Those factors, as set forth in *City of Poplar Bluff v.*

International Union of Operation Engineers, Local 2, AFL-CIO, Public Case No. UC 90-030 (SBM 1990) are:

1. Similarity in scale or manner of determining earnings.
2. Similarity in employment benefits, hours of work, and other terms and conditions of employment.
3. Similarity in the kind of work performed.
4. Similarity in the qualifications, skills, and training of employees.
5. Frequency of contact or interchange among the employees.
6. Geographic proximity.
7. Continuity or integration of production processes.
8. Common supervision and determination of labor-relations policy.
9. Relationship to the administrative organization of the employer.
10. History of collective bargaining.
11. Extent of union organization.

Based upon the evidence in the record, the Union did not prove that a unit consisting of the code enforcement officers, excluding supervisors, is an appropriate unit. Specifically, the Union failed to prove that the code enforcement officers have such special and distinct interests as would outweigh and override the community of interest shared with the other employees of the City's Community Services Department. See, *National Labor Relations Board v. Harry T. Campbell Sons' Corporation*, 407 F.2d 969, 976 (4th Cir. 1969)(quoting, *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962)).

As to the similarity in scale or manner of determining wages, the senior code enforcement officer, the code enforcement officers, the code enforcement clerk, the Building Regulations inspectors, the permit clerks, the neighborhood partnership coordinator, the housing program coordinator, the construction activities manager, and

the loan and fair housing coordinator are all paid by the hour. The record contains no further evidence with regard to this factor.

No evidence was introduced at the hearing to show a significant difference between the employment benefits, hours and working conditions enjoyed by the code enforcement officers and the other Community Services Department employees. All Community Services Department employees have the same fringe benefits. However, there is no evidence in the record concerning the Department employees' hours of work or the City's personnel policies.

There is a substantial similarity between the kind of work performed by the code enforcement officers and the kind of work performed by other employees of the Community Services Department. Each of the code enforcement officers is responsible for enforcing the zoning code, nuisance code, and building code. They perform inspections on existing building checking for code violations. The development coordinator also performs inspections searching for zoning code violations. The Building Regulations inspectors are responsible for enforcing the building code and perform inspections on new construction and renovations to ensure compliance with the building code. The Community Development Division personnel inspect rehabilitation projects to ensure compliance with the building regulations, minimum housing standards, and zoning codes. The neighborhood partnership coordinator, the construction activities manager and the housing program coordinator all perform inspections.

There are differences in the qualifications, skills and training of the individual employees in the Community Services Department. The code enforcement officers are required to have a high school education. They have no specialized skills or training. Likewise, at least some of the positions in the Community Development Division do not

require any specialized skills or training. The neighborhood partnership coordinator is one such position. However, the Building Regulations inspectors do possess some specialized skills. To be the plumbing inspector one must be a master plumber. To be the electrical inspector one must be a master electrician. The code enforcement officers could qualify for positions in the Community Development Division. However, they could not qualify for positions in the Building Regulations Division or the Community Services Planning Division.

There is a significant amount of interchange and interaction between the various employees of the Community Services Department. The code enforcement officers interact with the Community Services Planning Division in enforcing zoning codes. For example, if a code enforcement officer sees a sign violation he will check with the City Planner or development coordinator to see if a permit or special exception was granted concerning the sign. The code enforcement officers also interact with the Building Regulations Division when inspecting abandoned or vacant buildings. If during an inspection of a building the code enforcement officer discovers a complicated building code problem, he will contact an inspector in the Building Regulations Division to determine what steps he should take. If the Building Regulations inspector deems it necessary, he will go out and inspect the problem. The code enforcement officers and Building Regulations inspectors coordinate their activities directly through the use of radios. They may communicate as many as four times a day. Furthermore, the code enforcement officers interact with the construction activities manager and the neighborhood partnership coordinator of the Community Development Division. If during the course of his duties inspecting rehabilitation projects, the construction activities manager discovers problems with weeds, abandoned cars or junk, he will contact the code enforcement officer in that district. Likewise, if the code enforcement

officer finds a problem with a building that is being rehabilitated with federal funds, he will contact the construction activities manager. The neighborhood partnership coordinator also works closely with both the construction activities manager and the code enforcement officers in her efforts to revitalize areas of the City. Finally, the code enforcement officers interact with the work crew supervisors. The day-to-day activities of the work crew supervisors are coordinated by the senior code enforcement officer. The four code enforcement officers also interact with the work crew supervisors concerning weeds and trash on public property.

All Community Services Department personnel, except the neighborhood partnership coordinator, are located in City Hall. The neighborhood partnership coordinator is currently located in Paden Market. The code enforcement officers' offices are located on the fourth floor of City Hall. The Building Regulations inspectors' offices are located on the second floor of City Hall. However, the code enforcement officers and Building Regulations inspectors spend approximately six hours per day in the field carrying out their assigned duties. The construction activities manager is also out in the field each day performing his duties.

There is a significant amount of continuity or integration in the Community Services Department's processes. For example, the code enforcement officers are responsible for enforcing the zoning code, nuisance code, and building code. They perform inspections on existing building checking for code violations. The Building Regulations inspectors are responsible for enforcing the building code and perform inspections on new construction and renovations to ensure compliance with the building code. They coordinate their inspection activities via the radio. In carrying out their respective duties they communicate frequently.

All Community Services Department employees do not have the same immediate supervisor. The Neighborhood Services Manager supervises the senior code enforcement officer, the code enforcement officers, the work crew supervisors, and the code enforcement clerk. The Chief Building Official supervises the two building inspectors, the mechanical inspector, the electrical inspector, the plumbing inspector, and the permit clerks. The City Planner supervises the development coordinator. The Community Development Supervisor supervises the neighborhood partnership coordinator, the housing program coordinator, the construction activities manager, and the loan and fair housing coordinator. However, the fact that all of the named Department employees do not have the same immediate supervisor, does not preclude a finding that they share a community of interest. *See, California Physicians' Service d/b/a California Blue Shield v. Professional, Office and Industrial Union, affiliated with Marine Engineers' Beneficial Association, (AFL-CIO), 178 NLRB 116 (1969).* Furthermore, there is no evidence in the record concerning the City's personnel policies or the determination of labor-relations policies.

In addition, there was no evidence introduced at the hearing which shows that the code enforcement officers have a significantly different relationship to the City's administrative organization, or to the Department's organization, than the relationship of the other Community Services Department employees.

Finally, there is no history of collective bargaining within the City's Community Services Department. No Department employees are currently represented by a union.

The Union has the burden to prove that the petitioned-for unit is an appropriate unit. The Union has not met its burden of proof. Based upon the evidence in the record, the Board can not say that the code enforcement officers have such special and distinct interests that outweigh and override the community of interest shared by all of

the employees in the City's Community Services Department. Therefore, a unit consisting of the code enforcement officers, excluding supervisors, is not an appropriate unit.

Since the Union will not proceed to an election in any unit other than the petitioned-for unit, the Board does not have to decide whether the bargaining unit proposed by the City is an appropriate unit. Therefore, the Board will not decide that issue.

ORDER

The State Board of Mediation finds that a unit consisting of the code enforcement officers, excluding supervisors, is not an appropriate unit. Accordingly, the petition is hereby dismissed.

Signed this 21st day of July, 1998.

STATE BOARD OF MEDIATION

(SEAL)

/s/ John Birch
John Birch, Chairman

/s/ LeRoy Kraemer
LeRoy Kraemer, Employee Member

/s/ Lois Vander Waerd
Lois Vander Waerd, Employer Member